

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

PHILLIP J. GREENE,) No. C 06-5551 MMC (PR)
Petitioner,) **ORDER OF DISMISSAL**
v.)
TOM L. CAREY,)
Respondent.)

)

On September 11, 2006, petitioner, a California prisoner proceeding pro se, filed the above-titled petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, challenging a conviction obtained in Santa Clara County Superior Court in 2003. Prior to filing the instant petition, petitioner filed another petition in this district challenging the same conviction. See Greene v. Evans, No. 05-3433 MMC (PR). That petition is currently stayed at petitioner's request pending his exhaustion of unexhausted claims contained therein.

A second or successive petition may not be filed in the district court unless the petitioner first obtains from the appropriate United States Court of Appeals an order authorizing the district court to consider such petition. See 28 U.S.C. § 2244(b)(3)(A). Here, petitioner has neither sought nor obtained such an order from the United States Court of Appeals for the Ninth Circuit. Accordingly, the instant petition is hereby DISMISSED.

To the extent petitioner wishes to pursue his now-exhausted claims, he must do so in his earlier-filed case, not by filing a new petition in a new case. Specifically, petitioner must file, in his earlier case, a request to lift the stay, and must clearly set forth in the caption of

1 said request the number of that earlier case, No. C 05-3433 MMC (PR). Additionally, if
2 petitioner wishes to amend the claims set forth in his earlier petition, he must do so by filing
3 an amended petition in that case. Such amended petition must include the caption and civil
4 case number No. C 05-3433 MMC (PR) and must include the words AMENDED PETITION
5 on the first page. Petitioner is cautioned that **the Amended Petition supersedes the initial**
6 **petition and may not incorporate any part of it by reference. Petitioner must include in**
7 **the Amended Petition all the claims he wishes to present, and any attachments he**
8 **wishes the Court to consider.**

9 In light of petitioner's payment of the filing fee, the application to proceed in forma
10 pauperis is hereby DENIED as moot.

11 This order terminates Docket No. 4.

12 The Clerk shall close the file.

13 IT IS SO ORDERED.

14 DATED: January 3, 2007


15 MAXINE M. CHESNEY
16 United States District Judge